IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

MONDAY, THE 3RD DECEMBER 2007 / 12TH AGRAHAYANA 1929

Crl.MC.No. 1344 of 2002()

CRRP.55/1997 of ADDL.SESSIONS COURT, THALASSERY
MC.28/1990 of JUDL.MAGISTRATE OF FIRST CLASS COURT, PAYYANNUR

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PETITIONER: REVISION PETITIONER/COUNTER PETITIONER:

VAYAKKARA HENRY, S/O. POWLEENA,
AGED 34 YEARS, RESIDING AT KUNHIMANGALAM,
P.O.KOVVAPPURAM, KANNUR DISTRICT.

BY ADV. SRI.V.RAJAGOPAL
SRI.K.N.CHATHUKUTTY

RESPONDENTS: RESPONDENTS/PETITIONERS:

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1. C.PADMAVATHY, D/O. PARAYI,AGED 29 YEARS,
MATTOOL CENTRAL, P.O.MATTOOL, KANNUR DIST.

2. HEMA (MINOR 8 YEARS) BY GUARDIAN AND
MOTHER FIRST RESPONDENT.

BY PUBLIC PROSECUTOR SRI.AMJETH ALI

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 03/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL.M.P.NO.915/2002 IN CRL.M.C.NO.1344/2002

DISMISSED

3.12.2007. SD/- A.K. BASHEER, JUDGE.

/TRUE COPY/

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A.K. BASHEER, J.

CRL.M.C.NO.1344 OF 2002

Dated this the 3rd day of December, 2007.

O R D E R

Respondent No.1, in a proceeding under Section 125 of the code of Criminal Procedure before the trial court, has preferred this petition under Section 482 of the Code challenging the concurrent award of maintenance at the rate of Rs.200/= to his minor daughter.

2. Respondent No.1 herein (Smt. Padmavathy) had initiated the above proceedings under Section 125 of the code claiming maintenance for herself and her minor daughter contending inter alia that the petitioner had married her and in the said wedlock, the daughter was born. The trial courr disallowed maintenance to Smt. Padmavathy since it had come out in evidence that at the time of her marriage to the petitioner, his marriage with another woman was still subsisting. It was further found that there was no evidence to prove that the marriage between the petitioner and Smt. Padmavathy was legally solemnised. However, the trial court held that paternity of the minor girl child was established and, therefore, the petitioner

was liable to pay maintenance to her at the rate of Rs.200/= per month from the date of the petition. It was also noticed by the trial court that the petitioner had failed to comply with the direction of the court to undergo DNA test.

3. The above order was challenged by the petitioner before the Sessions Court in a revision petition under Section 397 of the Code. The learned Sessions Judge dismissed the revision petition holding that the evidence available on record was sufficient to prove that the petitioner is the father of the minor child. In this context, it was also held by the Revisional Court that there was evidence to prove that there was a proper customary solemnisation of marriage between the petitioner and Smt. Padmavathy and that there was also evidence to establish their co-habitation thereafter. The learned sessions judge also found that the amount of maintenance awarded by the trial court to the child was just and reasonable. Thus the revision petition was dismissed with a cost of Rs.1,000/= to be paid to the respondents.

4. I have heard the learned counsel for the petitioner and perused the materials available on record. Having done so, I have

no hesitation to hold that this is not a fit case at all to exercise the inherent power vested with this Court under Section 482 of the Code. The courts below have meticulously examined the evidence adduced by the parties. In my view right conclusions have ben arrived at by the courts below. Therefore, no interference is warranted with the concurrent findings entered by the courts below. Therefore, this petition has to be dismissed. I do so. However, it is made clear that paternity of the minor child shall be subject to the decision of a competent civil court.

A.K. BASHEER, JUDGE.

cl

A.K. BASHEER, J.

CRL.M.C.NO.1344 OF 2002

O R D E R

3rd December, 2007.